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6 Attorneys for Plaintiffs, Brent Beasley, Ernest Glasgow, Cliff  
7 Smith, Greg Banks, Trustees of the Union Roofers Supplemental  
8 Annuity Trust, Union Roofers Health & Welfare Fund, Union Roofers  
Vacation Fund, Union Roofers Administrative Fund, Union Roofers  
Joint Apprenticeship and Training Fund; Pacific Coast Roofers Pension Plan

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

BRENT BEASLEY, ERNEST  
GLASGOW, CLIFF SMITH, GREG  
BANKS, TRUSTEES OF THE UNION  
14 ROOFERS SUPPLEMENTAL  
15 ANNUITY TRUST, UNION  
16 ROOFERS HEALTH & WELFARE  
FUND, UNION ROOFERS  
17 VACATION FUND, UNION  
ROOFERS ADMINISTRATIVE  
18 FUND, UNION ROOFERS JOINT  
APPRENTICESHIP AND TRAINING  
19 FUND; PACIFIC COAST ROOFERS  
PENSION PLAN;

**CASE NO.**

**COMPLAINT FOR:**

1. DELINQUENT CONTRIBUTIONS,  
LIQUIDATED DAMAGES,  
ATTORNEYS FEES AND COSTS;
2. SPECIFIC PERFORMANCE TO  
CONDUCT AN AUDIT

(ERISA Sec. 515, 502(A)(G), 29  
U.S.C. Sec. 1145, 1132(A)(C)(2))

22 | ALCALA COMPANY, INC.,  
23 | a California corporation; and DOES  
1 through 10, inclusive,

## Defendants

26 | //

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## **JURISDICTION**

2       1. This is a civil action to recover fringe benefit contributions, liquidated  
3 damages, attorneys fees and costs and also for specific performance to conduct an  
4 audit. This action arises and jurisdiction of the court is founded on section 301 of  
5 the Labor-Management Relations Act of 1947, as amended ("LMRA"), 29 U.S.C. §  
6 185a, and sections 502 and 515 of the Employee Retirement Income Security Act of  
7 1974, as amended ("ERISA"), 29 U.S.C. §1132 and 1145.

## **PARTIES AND OTHERS**

9       2. Plaintiffs BRENT BEASLEY, ERNEST GLASGOW, CLIFF SMITH  
10 and GREG BANKS are the Trustees of the UNION ROOFERS SUPPLEMENTAL  
11 ANNUITY TRUST, UNION ROOFERS HEALTH & WELFARE FUND, UNION  
12 ROOFERS VACATION FUND, UNION ROOFERS ADMINISTRATIVE FUND  
13 and the UNION ROOFERS APPRENTICESHIP AND TRAINING FUND.

14       3.     The above-referenced Trust Funds are self administered by their Board  
15     of Trustees and have their offices in the County of Los Angeles, City of Downey.  
16     Venue is proper in this Court under Section 502(e)(2) of ERISA, (29 U.S.C. Section  
17     1132(E)(2)).

18       4.    PACIFIC COAST ROOFERS PENSION PLAN was and is a Regional  
19 defined benefit pension plan associated with the United Union of Roofers,  
20 Waterproofers and Allied Workers Locals 220 and 36. The Trust Funds referenced  
21 in Paragraph 2 above and PACIFIC COAST ROOFERS PENSION PLAN are  
22 collectively referred to as "TRUST FUNDS".

23       5.     The TRUST FUNDS were created and now exist pursuant to Section  
24 302(c) of the Labor Management Relations Act of 1947 as amended, 29 U.S.C.  
25 Section 186(c). The TRUST FUNDS are multi-employer plans as denied in ERISA  
26 Section 3(37)(A) and as used in ERISA section 515 and 502(g)(2), as amended, 29  
27 U.S.C. Section 1145, 1132(g)(2).

28 | //

6. At all relevant times, ALCALA COMPANY, INC., a California corporation; and DOES 1 through 10, inclusive, (collectively referred to as "EMPLOYER") was and is a California corporation engaged in the roofers, waterproofers and allied industry in Southern California.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants named herein as DOES 1 through 10, are unknown to TRUST FUNDS, who therefore sue the defendants by such fictitious names, and TRUST FUNDS will amend this complaint to show their true names and capacities when the same have been ascertained.

8. The United Union of Roofers, Waterproofers and Allied Workers Locals 220 and 36 ("UNION") is a labor organization that is a party to the collective bargaining agreement(s) involved.

**FIRST CLAIM FOR RELIEF**  
**(DAMAGES FOR FAILURE TO PAY FRINGE BENEFIT**  
**CONTRIBUTIONS)**

9. On October 22, 2012, EMPLOYER executed a written Affirmation Agreement with the UNION, ("AFFIRMATION AGREEMENT"). A true and correct copy of the AFFIRMATION AGREEMENT is attached as Exhibit "1".

10. The AFFIRMATION AGREEMENT binds EMPLOYER to the Collective Bargaining Agreement and any amendments of the Collective Bargaining Agreement (collectively referred to as "AGREEMENTS").

11. The AGREEMENTS require EMPLOYER to make the fringe benefit contributions to TRUST FUNDS in accordance with Article 11 of the Collective Bargaining Agreement based on hours worked or paid to persons performing roofing work for EMPLOYER. Said contributions were agreed to be due and payable on the 15<sup>th</sup> day of the calendar month following the month during which the hours for which contributions are due were worked or paid.

11

1       12. Under the terms of the AGREEMENTS, the Union Roofers  
2 Administrative Fund was assigned to collect and remit a portion of the fringe  
3 benefit contributions as a sub-agent of the PACIFIC COAST ROOFERS PENSION  
4 PLAN to the Union Roofers Contractors Association, to the Southern California  
5 Union Roofers Labor Management Trust and to Local Unions 36 and 220 for "dues  
6 check-off" contributions. TRUST FUNDS are authorized to sue for sums due to  
7 these other collectively bargained entities as part of fringe benefits due.

8       13. The AGREEMENTS provide that prompt payment by employers of the  
9 fringe benefit contributions is essential to the operation of the TRUST FUNDS and  
10 that it would be nearly impossible to fix the actual damages to the TRUST FUNDS  
11 which would result by failure of EMPLOYER to make contributions on or before  
12 the 15<sup>th</sup> day of the month following the month of employment. While contributions  
13 are due on the 10<sup>th</sup> day, there is a 5 day grace period. The AGREEMENTS therefore  
14 provide that damages should be presumed to be ten percent (10%) of the delinquent  
15 contributions, but in no event less than \$10.00, which would become due and  
16 payable from EMPLOYER to the TRUST FUNDS as liquidated damages upon the  
17 date following the delinquency date.

18       14. EMPLOYER engaged workers who performed services covered by the  
19 AGREEMENTS undertaken by EMPLOYER during the term of the  
20 AGREEMENTS.

21       15. EMPLOYER has failed to pay the fringe benefit contributions required  
22 by the AGREEMENTS, and there is now due and owing TRUST FUNDS from  
23 EMPLOYER for unpaid contributions, the sum of \$34,074.43.

24       16. Demand was made upon EMPLOYER to make payments for the period  
25 April 2015 through September 2015. EMPLOYER has not responded to the  
26 demand.

27       ///

28       ///

17. As a result of the failure to pay fringe benefit contributions, EMPLOYER is liable for liquidated damages provided for under the AGREEMENTS in the sum of \$3,407.45.

18. It has been necessary for TRUST FUNDS to engage counsel to bring this action to recover the delinquent fringe benefit contributions. Pursuant to the AGREEMENTS and section 502(g)(2) of ERISA, 29 U.S.C. §1132(g)(2), the EMPLOYER is liable for reasonable attorneys' fees incurred in litigating this matter.

19. TRUST FUNDS have complied with all conditions precedent.

20. EMPLOYER is delinquent in contributions in a further sum, the exact amount of which is unknown to TRUST FUNDS, and TRUST FUNDS will move to amend this complaint when the true amount of the fringe benefit contribution delinquency is determined.

21. TRUST FUNDS have, concurrently with the filing of this complaint, served a copy of same upon the Secretary of Labor and Secretary of the Treasury.

## **SECOND CLAIM FOR RELIEF**

## **(SPECIFIC PERFORMANCE TO CONDUCT AN AUDIT)**

22. TRUST FUNDS and PACIFIC COAST ROOFERS PENSION PLAN  
reallege and incorporate herein by reference each and every allegation contained in  
paragraphs 1 through 21 of its First Claim for Relief. This Second Claim for Relief  
is asserted as to EMPLOYER, and DOES 1 through 10.

23. The AGREEMENTS provide that the PLANS have the specific authority to examine the EMPLOYER's job cost records, general check registers and check stubs, bank statements and canceled checks, general ledgers, cash disbursements ledgers, worker compensation insurance reports, financial statements, corporate income tax returns, employee time cards, payroll journals, individual earnings records of all employees, forms W-2, 1099 and 1096 remitted to the U.S.

1 Government, quarterly state tax returns, health and welfare and pension reports for  
2 all other trades, cash receipts' journal, copies of all contracts and all material  
3 invoices.

4 24. The TRUST FUNDS have requested access to EMPLOYER's business  
5 records for the purpose of conducting an audit.

6 25. EMPLOYER has failed and/or refuses to allow the TRUST FUNDS to  
7 complete such an audit.

8 26. The TRUST FUNDS have no adequate or speedy remedy at law.

9 27. It has been necessary for TRUST FUNDS to engage counsel to bring  
10 this action to compel compliance with the AGREEMENTS, and to recover the  
11 attorneys' fees and the costs for which EMPLOYER is liable pursuant to Section  
12 502(g)(1) of ERISA and pursuant to the AGREEMENTS.

13

14 WHEREFORE, PLAINTIFFS pray for judgment as follows:

15 **FOR THE TRUST FUNDS' FIRST CLAIM FOR RELIEF:**

16 1. For unpaid contributions in the sum of \$34,074.43;  
17 2. For liquidated damages as provided in the AGREEMENTS in the  
18 amount of \$3,407.45.  
19 3. For interest, as provided in the AGREEMENTS, on the unpaid  
20 contributions and liquidated damages from the first of the month following the date  
21 due to the present;

22 **FOR THE TRUST FUNDS' SECOND CLAIM FOR RELIEF:**

23 1. That EMPLOYER be compelled to forthwith submit to completion of  
24 an audit of EMPLOYER business records covering the period from June 2015  
25 through the present, by the TRUST FUNDS' auditors at the premises of  
26 EMPLOYER during business hours, at a reasonable time or times, and to allow the  
27 auditors to examine and copy the following books, records, papers, documents and  
28 reports of EMPLOYER: all job cost records, general check register and check

1 stubs, bank statements and canceled checks, general ledgers, worker compensation  
2 insurance reports, financial statements, cash disbursements ledgers, corporate  
3 income tax returns, employee time cards, payroll journals, individual earnings  
4 records of all employees, forms W-2, 1099 and 1096 remitted to the U.S.  
5 Government, quarterly state tax returns, health and welfare and pension report for  
6 all other trades, cash receipts' journal, copies of all contracts, and all material  
7 invoices;

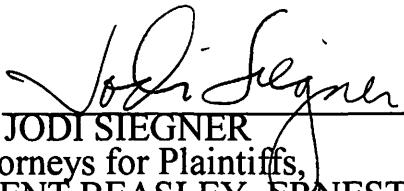
8 **FOR ALL CLAIMS FOR RELIEF:**

9 1. For reasonable attorneys' fees;  
10 2. For costs of this action;  
11 3. For further contributions according to proof; and  
12 4. For such other and further relief as the court deems proper.

13  
14 Dated: October 27, 2015

DeCARLO & SHANLEY,  
a Professional Corporation

15  
16 By:

17   
18 JODI SIEGNER  
19 Attorneys for Plaintiffs,  
20 BRENT BEASLEY, ERNEST  
21 GLASGOW, CLIFF SMITH, GREG  
22 BANKS, TRUSTEES OF THE UNION  
23 ROOFERS SUPPLEMENTAL  
24 ANNUITY TRUST, UNION  
25 ROOFERS HEALTH & WELFARE  
26 FUND, UNION ROOFERS  
27 VACATION FUND, UNION  
28 ROOFERS ADMINISTRATIVE  
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